

**2005 DRAFTING REQUEST**

**Bill**

Received: **12/16/2004**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Transportation - motor vehicles**  
**Transportation - traffic laws**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Operating after revocation

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**Instructions:**

2003 Act 33 but effective immediately (not 9-30-05)

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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			02/03/2005	_____	02/03/2005		

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*[Handwritten signatures and initials are present over the bottom portion of the table, including a large signature over the P2 row and initials "pb" to the right.]*

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a ✓ limit of costs @ 50

b ✓ \$10 reinstatement fee

c ✓ check into fed'l requirements for drug offenses - draft minimum required

d ✓ may make suspension after 4 OAS

e ✓ eliminate suspension for failure to pay non-traffic related forfeitures <sup>except child</sup>

f ✓ eliminate assessments ..... double punishments

g ✓ use tax refund intercepts to pay fines imposed after effective date of bill.

# **PROPOSING SOLUTIONS TO THE PROBLEM OF INCREASED NUMBER OF TRAFFIC OFFENDERS IN THE STATE OF WISCONSIN DRAFT**

**December, 2003**

## **I. Project Statement:**

A significant increase in the number of individuals whose driver's licenses are revoked in the State of Wisconsin has caused a tremendous strain on resources of the court system, jails, prosecutors' offices, and public defender offices.

## **II. Historical Perspective:**

### **A. 1997 WI Act 84- Change in Law**

In 1997, the state legislature passed 1997 Act 84 to change the way violations for driving with suspended or revoked licenses were determined.

Prior to 97 Act 84, there was no difference between Operating While Suspended (OWS) and Operating After Revocation (OAR) for criminal prosecution purposes. Rather, people faced one of three sets of penalties for OWS or OAR based on the reasons their operating privileges were suspended or revoked.

A person whose operating privileges were suspended or revoked solely because of failure to pay a forfeiture was not subject to criminal prosecution. On the other extreme, drivers who had their operating privileges suspended or revoked because of a drunk driving arrest and were arrested for OWS or OAR faced fines and minimum mandatory jail sentences. In between, everyone whose operating privileges were suspended or revoked for other reasons faced potential jail sentences and fines.

The only exception to this scheme was people who committed first offense OAR. Generally, first offenders faced only civil sanctions. But, the defendants who had been categorized as habitual traffic offenders faced imprisonment on first offense.

The problem with this scheme was that figuring out which category a defendant fell into was complicated. Police, prosecutors, defense attorneys and courts spent a lot of time trying to discern the category into which a driver should be placed. Some jurisdictions were overwhelmed by the process and simply issued forfeiture tickets to most violators. OWS and OAR violations soared.

Act 84 simplified this scheme by creating two separate and distinct categories of violations: (1) OAR for drivers who committed serious driving offenses such as Operating while Intoxicated (OWI), Fleeing from Officer (FFO), Hit & Run, and operating while suspended repeatedly (4 times); and (2) OWS for drivers who committed less serious driving violations that merited license action or who failed to pay forfeitures.

To accomplish this end, the legislature went through the entire traffic code and categorized all the offenses for which operating privileges could be withdrawn and chose a license sanction: suspension (OWS) or revocation (OAR).

Under Act 84, OWS violations became strictly civil forfeitures; a defendant faces only a forfeiture and potential further license suspension for driving after suspension. OAR became a criminal offense; an OAR defendant faces fines and potential jail time. Minimum mandatory jail sentences were eliminated; the courts were entrusted with responsibility to create judicial sentencing guidelines on a district by district basis in the hopes that they could adjust sentences to reduce jail overcrowding.

Act 84 was implemented over a five year period. Almost immediately, Department of Motor Vehicles (DMV) imposed the legislature's changes to the Habitual Traffic Offender (HTO) revocation system. As its computer systems allowed, DMV began suspending or revoking licenses for traffic violations following the new scheme. Finally, DMV began suspending rather than revoking licenses for noncompliance with the safety responsibility law.

During this transition period, while the old suspension and revocation rules were in effect, first offense OAR remained a strictly a civil offense; even HTO offenders were exempted from criminal prosecution while time passed. The theory was that with time most drivers whose licenses were revoked under the old license revocation scheme would have an opportunity to reinstate their operating privileges.

A year after Act 84 was fully implemented, the provision that left first offense OAR's a civil offense sunsetted. As of May, 2002, all OAR offenses became criminal offenses; anyone charged with first offense OAR is now charged in criminal court.

## **B. Change in Policy**

Since Act 84, the number of traffic cases in the criminal justice system has risen dramatically with the largest number of cases being in Milwaukee County<sup>1</sup>. This increase in Milwaukee County may be attributed not only to the change in law but also to a change in policy by the local police department.

According to information provided by Department of Transportation (DOT), prior to Act 84 the Milwaukee Police Department directed all OAR cases to municipal court.

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<sup>1</sup> According to data provided by the State Public Defender's Office, in 2002 the SPD handled 7,091 OAR offenses in Milwaukee County. In 2003, it appears that the SPD will handle about 10,700 OAR offenses in Milwaukee.

Subsequent to Act 84, the Milwaukee Police Department changed its practice and directed all OAR cases to circuit court. This change in policy, coupled with the sunset of the provision that made first offense OAR a civil offense, undoubtedly led to one result: Milwaukee County Circuit Courts are overflowing with OAR traffic cases. In fact, in order to process all of these cases, there is one Milwaukee Circuit Court branch dedicated almost entirely to traffic offenses.

### **C. Increase Costs Statewide**

Of course, this problem is not limited merely to Milwaukee County. According to data provided by the State Public Defender's Office (SPD), the number of OAR violations handled by the SPD statewide has increased 42.5% this calendar year. From January through December 2002, the SPD handled 14,386 OAR offenses. In comparison, the SPD is on track to handle 20,500 OAR offenses this calendar year.<sup>2</sup>

The costs associated with the increase number of OAR cases in the criminal justice system to just the SPD alone are dramatic. The average cost to the SPD for a misdemeanor case is \$253.16<sup>3</sup>. With an additional 6,114 OAR cases in the SPD system, it will cost an additional \$1,547,820.

But the SPD is not the only agency affected by these costs; similar financial burdens are placed on the courts, prosecutors, law enforcement and jails. For example, in Milwaukee when a person is ticketed for an OAR violation, they are ordered to appear in traffic intake court. If they do not appear, a warrant is issued for their arrest. Once they are arrested and awaiting initial appearance, bail is set per the Revised Uniform State Traffic Deposit Schedule and Uniform Misdemeanor Bail Schedule. The schedule sets bail for OAR cases at \$250.<sup>4</sup> It is not unusual for a defendant to remain in custody twenty-four to forty-eight hours awaiting their initial appearance because they are unable to post \$250. Each day that they remain in custody costs the county jail and sheriff's department money.<sup>5</sup>

### **D. Increasing Use of License Suspension as Penalty for Nonpayment of Fines**

Over the past thirty years, the legislature has increasingly allowed municipal and circuit courts to suspend drivers' licenses as a mechanism to collect unpaid forfeitures and fines. In 1980, the courts issued 11,683 suspension orders for failure to pay a fine or forfeiture statewide. Last year, the courts issued 196,816 such orders<sup>6</sup>.

<sup>2</sup> From January through November 24, 2003, the most recent date for which data is available, the SPD handled 18,706 OAR offenses. If this trend continues, by the end of 2003, the SPD should handle approximately 20,500 OAR offenses.

<sup>3</sup> This figure includes all misdemeanor cases, including contract cases.

<sup>4</sup> The schedule does allow for lower bail options; Disorderly conduct is set at \$150.

<sup>5</sup> Department of Administration reports that the average cost per day to house an inmate at a county jail is \$60.

<sup>6</sup> 179,765 Failure to Pay Fine (FPF) + 15,923 Failure to Pay Judgment (FPJ) + 1,128 Failure to Pay Non-Traffic Forfeiture) FPN = 196,816 total forfeiture collection related suspensions.

The rise in failure to pay forfeiture suspensions coincides with modest increases in forfeiture amounts and fairly dramatic increases in court charges and fees assessed with a forfeiture. For example, in 1980, court costs on a \$20 speeding ticket for 10 mph over the limit was \$7. A penalty assessment was attached for 12% of the forfeiture amount (\$2.40). The total forfeiture was \$29.40, including all costs.

Now, a ticket for the same offense calls for a \$30 forfeiture, but the court costs and fees are \$126.20 statewide, \$129.70 in Milwaukee (up \$18 just from last year) determined as follows:

Penalty Assessment = 24% of forfeiture (12% in 1980) [757.05 (1) (a), Stats.];

Court Costs = \$25.00 [814.63 (1), Stats.] (\$7 in 1980);

Crime Lab Drug Assessment and Jail Assessment = \$17.00 (Didn't exist in 1980);

Jail Assessment = 1% of the fine or forfeiture imposed or \$10, whichever is greater [s. 302.46 (1), Stats.] (Didn't exist in 1980);

Crime Lab Drug Assessment = \$7 [165.755 (1) (a), Stats.] [Raised from \$5 by budget] (Didn't exist in 1980);

Justice Information Fee and Court Support Fee = \$77.00 (Didn't exist in 1980);

a. Justice Information Fee = \$9 [s. 814.635 (1), Stats.] (Didn't exist in 1980);

b. Court Support Fee = \$68 [Raised from \$52 in the budget.] {s. 814.634 (1) (a), Stats.] (Didn't exist in 1980)

Municipal court assess the 24% penalty assessment, the 1% or \$10 jail assessment and \$7 crime lab drug assessment plus local court costs of \$15 to \$23. [s. 814.65 (1), Stats.] (Didn't exist in 1980);

Milwaukee surcharge \$3.50 [814.635 (1m)]<sup>7</sup> (Didn't exist in 1980).

These fees, costs and assessments are used to fund court operating expenses. According to the Office of the Wisconsin Supreme Court, during the calendar year 2001, \$125,640,154.31 was collected through these fees, costs and assessments.<sup>8</sup>

Many persons who are charged with traffic violations are unable to pay the total forfeiture amount called for on their ticket. As a result, their licenses are routinely suspended by the courts that convicted them.

<sup>7</sup> Information provided by John Sobotik, Legal Counsel at Department of Transportation (DOT).

<sup>8</sup> See Attachment #1

Once their licenses are suspended, the persons find themselves on a kind of debtor's treadmill. They get stopped and ticketed for driving while their operating privileges are suspended and receive another forfeiture that, like the first, goes unpaid. They can do this four times until their operating privileges are ultimately revoked. At that point, they face criminal OAR charges if they drive again.

In calendar year 2002, 1,019,036 traffic convictions were reported to DMV.<sup>9</sup> DMV processed 200,000 court orders suspending driver licenses for non-payment. This suggests that at least 20% of forfeitures are not paid in a timely manner.

#### **E. Probationary Driver's Licenses- Graduated Driver's Licensing (GDL)**

Most traffic violations are punishable by an assessment of points on ones driver's license. When a person accumulates 12 points against their license, the license is suspended for a period of time. The more points the driver accumulates, the longer the suspension.

This poses a greater problem for individuals with probationary driver licenses, because points are doubled on second and subsequent offenses for probationary drivers.

For example, a typical speeding ticket of 11-20 mph over the speed limit is a four point violation for a driver with a regular license. When such a driver commits two such offenses, and he has 8 demerit points on his driver record, DMV sends the driver a warning informing him/her that one more 4 point ticket will result in a driver license suspension. (DMV sends warning letters to anyone accumulating 6 or more points). If the person is arrested for a 3<sup>rd</sup> 4-point speeding ticket in a year, however, and is ultimately convicted of that offense, his/her driver license is suspended for accumulating 12 points in one year.

A person with a probationary license, in contrast, gets his/her license suspended faster and without warning. The first ticket such driver receives results in 4 points, just like a regularly licensed driver. The second ticket, however, is subject to point doubling, so the driver is assessed 8 demerit points for that same speeding violation. Thus, the person accumulates 12 points in two offenses and his or her operating privileges are suspended.

DMV doubled points in this manner for a probationary driver until the mid-1980's, when it concluded it was suspending too many drivers' licenses in this fashion. DMV then changed how it treated probationary drivers so that each conviction resulted in an additional two points rather than doubling the points assessed. Under that system, the driver in the above example would have received 4 points for the first offense speeding, and 6 (4 plus 2) points for the second offense ticket, for a total of 10 points. He would have received a warning letter from DMV and would not have had his license suspended. The adoption of the graduated driver license law legislatively repealed DMV's

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<sup>9</sup> Anna Biermeier, Revocation and Suspension Section Chief at DOT, advises that while 1,019,036 violations were processed, only 900,000 were put on driver records. DOT does not put most 0 point violations, such as loud muffler citations, on driver records



administrative rules that produced this result and returned Wisconsin to a point doubling system.

The result of that change is evident in suspension statistics. In the years 1997 through 2000, DMV suspended roughly 30,000 licenses per year for demerit point violations. In 2001, in contrast, immediately after the passage of GDL point doubling provisions in the state budget, the number rose to 41,000.

It is important to note that GDL point doubling rules are applied not just to teenagers who obtain driver licenses, but to many adults, too, who hold probationary licenses. A large percentage of drivers in the Milwaukee area have probationary licenses. High numbers of probationary licenses in Milwaukee, as well as other cities in Wisconsin, is a result of two policies: (1) If you move to this state from another state, even if you were licensed in the other state, you must first start with a probationary license; and (2) In order for a person to obtain a regular valid driver's license, an individual may not have a revocation or suspension for a period of two years prior to the date of one's last birthday. If a driver cannot pay fines and as a result is suspended, it is quite difficult, if not impossible, for that person to elevate from a probationary to regular driver's license.

It is worth mentioning that Failure to Pay Fine (FPF) suspensions undoubtedly fuel increased point suspensions, too. As people are arrested for driving after suspension following an FPF suspension, they are assessed 3 demerit points for each OWS citation. Eventually, these accumulate and contribute to the driver's operating privilege being suspended for demerit point accumulation. Two such tickets in a year will suspend the license of a probationary driver<sup>10</sup>; four in a year (with no other citations) will result in suspension for a driver with a regular license.

## **F. Drug Violation Suspension**

Currently, any person found guilty of a drug misdemeanor or felony must have their driver license revoked or suspended as a consequence of the crime and this suspension must run consecutively to any other suspension. This law was adopted by Wisconsin government in response to federal anti-drug legislation that requires all states to either adopt such a law or resolve not to do so. Federal lawmakers clearly wanted states to impose driver license suspensions for non-driving related drug offenses.

Most states, however, have not adopted such a law. Instead, most states have resolved not to do so. Adopting such a resolution insulates the state from any loss of federal funds under the federal law that encourages drug suspensions.

Moreover, of those states that do suspend driver licenses for non-driving drug offenses, most permit courts to exercise discretion in deciding whether to impose the sanction, allowing courts to exempt people who would suffer a hardship if the suspension were

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<sup>10</sup> The ticket that led to the suspension would have been the first ticket on the driver's record. All tickets subsequent to that first ticket are subject to point doubling.

imposed. Wisconsin law requires suspension of all persons across the board without regard to individual circumstances.

It should be noted that there is a middle ground between adopting the federal scheme, as Wisconsin has done, and having no non-driving related drug offense suspensions at all. If the state resolves to pass a drug suspension law different than the federal law, then the state may still receive federal funds. In fact, the majority of states have resolved not to follow the federal law.

#### **G. Poverty and Lack of Resources**

When one examines the problem of unlicensed drivers, poverty, both for systems and individuals, appears to be a major contributing factor. For example, without significant financial resources, it is difficult for a teenager to get a driver license today.

State law requires that a minor pass a driver education class as a precondition to obtaining a driver license. A minor cannot obtain an instruction permit to practice with his/her parents without being enrolled in a class. But, because of budget reductions, there is no funding available in FY05 for driver education programs in this state.

Private driving schools exist, but the cost for such a program is beyond the financial reach of most low-income children. Many families at lower income levels cannot afford to enroll their children in these private driving schools. Thus, the children in these families must either not drive, or drive illegally. More often than not, the latter path is chosen, due to reasons such as a need to get to employment opportunities which are not near bus lines, and young drivers quickly board the FPF license suspension treadmill.

### **III. Solutions to the Problem**

Creative thinking on the part of many individuals is needed to help drivers become licensed. This paper and subsequent proposals are meant to encourage the reader to start looking at the problem from different perspectives. Several ideas are included below; some may not be feasible but they will at the very minimum encourage new thought:

1. Create a task force of stakeholders: the Governors Office, Legislators, County Executives, Judges, Police Departments, Department of Transportation, Public Defenders and District Attorneys, to recommend new laws and changes in policies which will reduce the numbers of persons subject to criminal prosecution for being unlicensed.
2. Create volunteer programs in Milwaukee and other communities whereby young people can learn to drive responsibly and obtain drivers' licenses. This may include using state vehicles on weekends, when not otherwise being used by state employees, and allowing indigent students who attend schools where there are no driver's education programs as part of the high school curriculum to use these vehicles to learn road skills.

3. Consider other alternatives to suspension of licenses for failure to pay fines. For example, consider allowing individuals to perform community service, attend school or participate in some other activity in lieu of paying fines in cash.
4. Consider allowing fines and costs to be forgiven at a set amount for every day the person's operating privileges are suspended. For example, a \$2 per day forgiveness rate would result in a \$150 forfeiture being forgiven after 75 days of suspension.
5. Encourage local prosecutor's offices to defer prosecution of OAR cases that are based on non-payment of fines (OWS's). A driver's license reinstatement program could be set up in conjunction with this initiative. If a person agrees to participate in this program and obtain a valid driver's license, the case is never brought into the criminal justice system.
6. Consider modifying the drug suspension law so that non-driving related drug suspensions may be served concurrently with other suspensions rather than consecutive to other suspensions.
7. Consider eliminating other impediments to re-licensing. For example, in order for a person to actually serve a suspension for a drug violation, many times a person must pay all their other fines, take road/written tests, obtain high-risk auto insurance, pay a reinstatement fee and otherwise qualify to obtain a valid license. Once they do all that, DMV finally can impose their drug suspension. There is little incentive for people to jump through all those hoops just to be told they cannot have a driver license for another six months or more.
8. Consider reversing the decision to require doubling of points for probationary drivers.
9. Consider eliminating or reducing some or all of the court costs, fees and assessments added to traffic forfeitures for those who are unable to pay. For example, an indigent individual might be eligible to have some or all of these costs, fees and assessments waived. A three-month pilot program could be run to determine if reducing overall forfeiture amounts results in more fines being paid overall and fewer FPF suspensions.
10. Consider eliminating reinstatement fees for some or all drivers so that when a suspension or revocation period is completed, the driver's license automatically reinstates absent some other problem requiring attention. Currently, a person must pay a \$50 reinstatement fee before his or her driver license is reinstated. If eliminating the fee generally is unworkable, consider waiving the fee for certain classes of defendants, such as persons suspended for FPF, or indigent drivers. Any such scheme would need to provide an alternative source of revenue for the DMV, which relies on reinstatement fees in its current budgeting.

11. Eliminate license revocations for repeated offenses of operating after suspension, or alternatively, eliminate DOT's authority to revoke driver's licenses by default upon conviction of four OWS offenses. Any such proposal would need to provide some mechanism for courts to deal with drivers who repeatedly continue to drive without a license.
12. If FPF suspensions are necessary for court operations, consider providing more latitude in the amount of time a person has to pay the fine before the suspension goes into effect.
13. If a court as part of a sentence has imposed a fine and an alternative to non-payment of the fine that includes jail time, consider partially satisfying fines by time spent in jail. For example, establish a policy whereby a person receives day for day credit for time in custody while serving a fine and reducing the fine for the serving of such time. For instance, if a person is in custody 24 hours, then the fine is reduced by \$100. Currently, in most circumstances, a person must either serve the time or pay the fine in its entirety. There is no credit or reduction of the fine for time served in custody. (Note: Of course, since the cost of incarcerating an individual is often as much as \$60 per day, it probably makes even more sense for the courts to discontinue use of jail alternatives for non-payment of fines and rather impose community service options, or other cost-savings measures instead.)
14. Consider changing the funding mechanism for courts and other entities currently receiving the various assessments and fees that are tacked onto all forfeitures and thereby reduce their reliance on traffic offender fees to pay for these judicial and criminal justice system costs.
15. Allow drivers to consolidate fines and pay monthly payment to one place. Currently, a driver may have to go to several different courts in various places to make arrangements to pay fines. Additionally, if a driver is paying fines on an installment program, allow that driver to remain licensed while payments are being made.
16. Consider having all courts grant a one-time driver license suspension amnesty for all forfeitures for those individuals who can establish their indigent status. Indigency could be determined by the W-2 or Federal Poverty Guidelines and could shown by last year's tax returns. (This could be done without legislation by the communities involved.) Another option along those same lines is to have an amnesty pilot project in Milwaukee County only.
17. Eliminate Habitual Traffic Offender (HTO) revocation. According to DOT, most HTO revocations today are caused by an accumulation of minor traffic violations.
18. Consider eliminating assessment of points on offenses that result in suspensions, so as to prevent double-punishment.
19. Use tax refund intercepts for collection purposes.

20. Simplify garnishment mechanisms for courts to employ. Additionally, allow DOR and DOT to share social security numbers and employer information between themselves and with courts to facilitate collections.
21. Consider amending s. 128.21 to permit wage earners to amortize forfeiture, fine and damage judgment debts.
22. Change the Revised Uniform State Traffic Deposit Schedule and Uniform Misdemeanor Bail Schedule so that the bail deposit for an OAR is \$100 or \$150, as opposed to \$250.
23. Currently, if a person is charged with Operating While Intoxicated, the person must complete an Alcohol Assessment and pay a fee. These fees are often in the hundreds of dollars. Consider amending these fees to a sliding scale or waiving fees for indigent persons.
24. Consider modifying policies that make it difficult for a person to obtain an Occupational License.
25. Consider instituting a new policy that would allow drivers to pay fines at the time that the law enforcement officer is issuing the ticket. Many states already have this type of process in place. One may even want to go a step further and allow individuals to pay a reduced amount if payment is made at the time of the violation.

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

needed  
1-19-05  
D-note

Gen

1 AN ACT ...; relating to: operating a vehicle after suspension or revocation of  
2 operating privileges and providing a penalty

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 165.755 (1) (b) of the statutes is amended to read:

4 165.755 (1) (b) A court may not impose the crime laboratories and drug law  
5 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),  
6 (bm), (br), or (bv) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,  
7 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood  
8 alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,  
9 for a violation of 343.44 (1) <sup>S.</sup>, or for a violation of a state law or municipal or county

ordinance involving a nonmoving traffic violation or a safety belt use violation under s. 347.48 (2m).

History: 1997 a. 27; 1999 a. 9, 72; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327.

**SECTION 2.** 302.46 (1) (a) of the statutes is amended to read:

302.46 (1) (a) On or after October 1, 1987, if a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, <sup>or</sup> for a violation of <sup>5.</sup> 343.44 (1), or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail surcharge under ch. 814 in an amount of 1% of the fine or forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the court shall determine the jail surcharge on the basis of each fine or forfeiture. If a fine or forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge in proportion to the suspension.

History: 1987 a. 27; 1989 a. 22; 1989 a. 31 s. 1670c, 1670g; Stats. 1989 s. 302.46; 1989 a. 97, 359; 1991 a. 26, 32, 130, 189; 1993 a. 313; 1995 a. 201; 1999 a. 72; 2001 a. 16; 2003 a. 30, 139, 268, 326, 327.

**SECTION 3.** 343.10 (1) (a) of the statutes is amended to read:

343.10 (1) (a) If a person's license or operating privilege is revoked or suspended under this chapter or s. 767.303, 938.34 (14q), or 943.21 (3m), ~~or 961.50~~ and if the person is engaged in an occupation, including homemaking or full-time or part-time study, or a trade making it essential that he or she operate a motor vehicle, the person, after payment of the fee provided in sub. (6), may file an application with the department setting forth in detail the need for operating a motor vehicle. No person may file more than one application with respect to each revocation

1 or suspension of the person's license or operating privilege under this chapter or s.  
2 767.303, 938.34 (14q), or 943.21 (3m), ~~or 961.50~~, except that this limitation does not  
3 apply to an application to amend an occupational license restriction.

History: 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277; 1995 a. 113, 201, 269, 401, 436, 448; 1997 a. 35, 84, 237; 1999 a. 109; 2001 a. 16 ss. 3409f, 3409g, 4060hw, 4060hy; 2003 a. 33, 80, 200, 326.

4 **SECTION 4.** 343.10 (2) (a) 1. of the statutes is amended to read:

5 343.10 (2) (a) 1. Except for a revocation or suspension that arose out of the same  
6 incident or occurrence for which the person's license or operating privilege is  
7 currently revoked or suspended, the person's license or operating privilege was not  
8 revoked or suspended previously under this chapter or ch. 344 or s. 943.21 (3m) ~~or~~  
9 ~~961.50~~ <sup>plain space</sup> within the one-year period immediately preceding the present revocation or  
10 suspension, except as provided in s. 344.40.

History: 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277; 1995 a. 113, 201, 269, 401, 436, 448; 1997 a. 35, 84, 237; 1999 a. 109; 2001 a. 16 ss. 3409f, 3409g, 4060hw, 4060hy; 2003 a. 33, 80, 200, 326.

11 **SECTION 5.** 343.10 (5) (b) of the statutes is amended to read:

12 343.10 (5) (b) *Limitations.* Occupational licenses are subject to the limitations  
13 specified in ss. 343.30 (1q) (b) and (h), 343.305 (8) (d) and (10) (b) and (em), 343.31  
14 (3m), ~~343.32 (1m), and 767.303 and 961.50.~~

History: 1973 c. 90, 218; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193; 1979 c. 102, 316, 355; 1981 c. 20; 1983 a. 27, 525, 526; 1985 a. 32 s. 3; 1985 a. 71, 337; 1987 a. 3; 1989 a. 31, 38, 105, 359; 1991 a. 39, 269, 277; 1995 a. 113, 201, 269, 401, 436, 448; 1997 a. 35, 84, 237; 1999 a. 109; 2001 a. 16 ss. 3409f, 3409g, 4060hw, 4060hy; 2003 a. 33, 80, 200, 326.

15 **SECTION 6.** 343.21 (1) (j) of the statutes is amended to read:

16 343.21 (1) (j) For reinstatement of an operating privilege previously revoked  
17 or suspended, ~~\$50~~ \$10.

History: 1973 c. 90, 309; 1975 c. 5; 1977 c. 29 ss. 1459, 1654 (7) (a), (e); 1977 c. 273; 1979 c. 221, 306; 1981 c. 20, 71; 1983 a. 243; 1985 a. 29, 65; 1987 a. 3, 358; 1989 a. 105; 1991 a. 39; 1993 a. 16; 1995 a. 113; 1997 a. 27; 1999 a. 9; 2003 a. 280.

18 **SECTION 7.** 343.30 (1g) (b) of the statutes is amended to read:

19 343.30 (1g) (b) A court ~~shall~~ may revoke a person's operating privilege upon the  
20 person's conviction for violating s. 343.44 (1) (a), (b) or (d) or a local ordinance in  
21 conformity therewith if the person has been convicted of 3 or more prior violations  
22 of s. 343.44 (1) (a), (b) or (d), or similar violations under s. 343.44 (1), 1997 stats., or



1 a local ordinance in conformity therewith, within the 5-year period preceding the  
2 violation. ~~The~~ A revocation shall be for a period of 6 months, unless the court orders  
3 a period of revocation of less than 6 months and places its reasons for ordering the  
4 lesser period of revocation on the record.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; 2001 a. 15, 16, 38; 2003 a. 30, 80.

5 **SECTION 8. 343.30 (5)** of the statutes is amended to read:

6 343.30 (5) No court may suspend or revoke an operating privilege except as  
7 authorized by this chapter or ch. 345, 351 or 938 or s. 767.303, 800.09 (1) (c), 800.095  
8 (4) (b) 4., or 943.21 (3m), ~~or 961.50~~. When a court revokes, suspends or restricts a  
9 juvenile's operating privilege under ch. 938, the department of transportation shall  
10 not disclose information concerning or relating to the revocation, suspension, or  
11 restriction to any person other than a court, district attorney, county corporation  
12 counsel, city, village or town attorney, law enforcement agency, or the minor whose  
13 operating privilege is revoked, suspended or restricted, or his or her parent or  
14 guardian. Persons entitled to receive this information shall not disclose the  
15 information to other persons or agencies.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; 2001 a. 15, 16, 38; 2003 a. 30, 80.

16 **SECTION 9. 343.32 (1m)** of the statutes is repealed.

17 **SECTION 10. 343.32 (3)** of the statutes is amended to read:

18 343.32 (3) ~~Except as provided in sub. (1m), a~~ A revocation or suspension under  
19 this section may be for any period not exceeding one year unless a different period  
20 is specifically prescribed by law.

History: 1971 c. 42, 278, 281; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 221; 1981 c. 31, 216, 327; 1987 a. 24, 132; 1989 a. 22, 75, 105, 195, 359; 1991 a. 26, 32, 39, 189; 1993 a. 16, 314, 480; 1995 a. 113, 269, 338, 420, 448; 1997 a. 84, 135; 1999 a. 9, 185.

21 **SECTION 11. 757.05 (1) (a)** of the statutes is amended to read:

757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, <sup>or</sup> for a violation of 343.44 (1), <sup>s.</sup> or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty surcharge under ch. 814 in an amount of 24% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced in proportion to the suspension.

History: 1999 a. 9 ss. 2292m, 2298, 3050m to 3050o; 1999 a. 72 s. 6; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327.

**SECTION 12.** 814.63 (1) (c) of the statutes is amended to read:

814.63 (1) (c) This subsection does not apply to an action for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, <sup>s.</sup> for a violation of 343.44 (1), <sup>✓</sup> or for a violation of a safety belt use violation under s. 347.48 (2m).

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130; 1993 a. 16, 167, 313; 1995 a. 27, 227, 349; 1997 a. 27, 248; 1999 a. 9, 72; 2001 a. 16; 2003 a. 30, 33, 139, 268, 327.

**SECTION 13.** 814.63 (2) of the statutes is amended to read:

814.63 (2) Upon the disposition of a forfeiture action in circuit court for violation of a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district ordinance, except for an action for a first

1 violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the  
2 person who committed the violation had a blood alcohol concentration of 0.08 or more  
3 but less than 0.1 at the time of the violation, <sup>S.</sup> for a violation of 343.44 (1), or for a safety  
4 belt use violation under s. 347.48 (2m), the county, town, city, village, town sanitary  
5 district, or public inland lake protection and rehabilitation district shall pay a  
6 nonrefundable fee of \$5 to the clerk of circuit court.

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130; 1993 a. 16, 167, 313; 1995 a. 27, 227, 349; 1997 a. 27, 248; 1999 a. 9, 72; 2001 a. 16; 2003 a. 30, 33, 139, 268, 327.

7 **SECTION 14.** 814.65 (1) of the statutes is amended to read:

8 814.65 (1) COURT COSTS. In a municipal court action, except for an action for  
9 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)  
10 (b), if the person who committed the violation had a blood alcohol concentration of  
11 0.08 or more but less than 0.1 at the time of the violation, <sup>S.</sup> for a violation of 343.44  
12 (1), or for a violation of an ordinance in conformity with s. 347.48 (2m), the municipal  
13 judge shall collect a fee of not less than \$15 nor more than \$23 on each separate  
14 matter, whether it is on default of appearance, a plea of guilty or no contest, on  
15 issuance of a warrant or summons, or the action is tried as a contested matter. Of  
16 each fee received by the judge under this subsection, the municipal treasurer shall  
17 pay monthly \$5 to the secretary of administration for deposit in the general fund and  
18 shall retain the balance for the use of the municipality.

History: 1981 c. 317; 1983 a. 107; 1987 a. 181, 389, 399, 403; 1989 a. 22; 1991 a. 26; 1997 a. 27; 2003 a. 30, 33, 320.

19 **SECTION 15.** 814.85 (1) (a) of the statutes is amended to read:

20 814.85 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,  
21 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the  
22 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the  
23 time of the violation, <sup>S.</sup> for a violation of 343.44 (1), or for a safety belt use violation  
24 under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68 court

1 support services surcharge from any person, including any governmental unit as  
2 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or 814.63  
3 (1).

History: 1993 a. 16; 1995 a. 27, 201, 417; 2001 a. 109; 2003 a. 30, 33; 2003 a. 139 ss. 197 to 200; Stats. 2003 s. 814.85; 2003 a. 326 ss. 123 to 125.

4 **SECTION 16.** 814.86 (1) of the statutes is amended to read:

5 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681  
6 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation  
7 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the  
8 violation, <sup>s.</sup> for a violation of 343.44 (1), or for a safety belt use violation under s. 347.48  
9 (2m), the clerk of circuit court shall charge and collect a \$9 justice information system  
10 surcharge from any person, including any governmental unit, as defined in s. 108.02  
11 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), or (3) (a) or  
12 (b), or 814.63 (1). The justice information system surcharge is in addition to the  
13 surcharge listed in sub. (1m).

History: 1987 a. 27; 1989 a. 22; 1991 a. 26, 39; 1993 a. 16; 1995 a. 27, 201; 1997 a. 27; 1999 a. 9; 2003 a. 30, 33; 2003 a. 139 s. 201; Stats. 2003 s. 814.86; 2003 a. 326.

14 **SECTION 17.** 961.50 of the statutes is repealed.

15 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1273/?dn

PJH:.....

WLj

Representative Kessler:

This draft does the following:

1. Eliminates all additional court costs and fees for any violation of operating after suspension (OAS) or operating after revocation (OAR). Please note that your drafting instructions requested that court costs and fees be held at \$50, but I was not sure which costs and fees you want defendants to pay. Please advise.
2. Reduces the reinstatement fee for a license following suspension or revocation from \$50 to \$10.
3. Makes it permissible, but not mandatory, for a judge to revoke a person's operating privilege for a 4<sup>th</sup> or subsequent OAS or OAR violation within 5 years.
4. Eliminates suspending a person's operating privilege for a controlled substance violation that occurs in this state, another state, or a federally recognized American Indian tribe or band. Please note that I am unsure whether eliminating these suspensions may result in the loss of federal money. I am researching this issue with another drafter, and I will have the answer for you before I redraft this bill from a preliminary draft into one that can be introduced.

Please note that under current law, a court may not suspend an adult's operating privilege if the adult fails to pay a forfeiture that is unrelated to a traffic violation. However, juvenile courts may suspend a juvenile's license for failing to pay a forfeiture even if the forfeiture is unrelated to a traffic violation. Please let me know if you want me to address this issue.

Please also note that, although you requested tax refunds be intercepted to pay for fines, I am not sure which fines you want to be covered through tax refund intercepts. Please advise.

Finally, a person's operating privilege may be suspended for other violations that are unrelated to any traffic laws. Examples include failure to pay child support, making certain bomb threats, and repeatedly defrauding a hotel, restaurant, gas station, or taxicab operator. Except for eliminating suspension for drug violations, this draft does not change current law. Please let me know if there are specific violations for which you wish to eliminate license suspension or revocation as a possible penalty.

I look forward to working with you further on this draft.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1273/P1dn

PJH:wlj:rs

January 19, 2005

Representative Kessler:

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Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)



**2005 DRAFTING REQUEST**

**Bill**

Received: **12/16/2004**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Transportation - motor vehicles**  
**Transportation - traffic laws**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Operating after revocation

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**Instructions:**

2003 Act 33 but effective immediately (not 9-30-05)

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	phurley						
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FE Sent For:

**<END>**

**2005 DRAFTING REQUEST**

**Bill**

Received: **12/16/2004**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Transportation - motor vehicles**  
**Transportation - traffic laws**

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Submit via email: **YES**

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	phurley						
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FE Sent For:

<END>

D-note  
kept in homicide  
involving use of  
vehicle

need to do:

1. Put ct costs back in  
2. Change def of habitual offenders  
to only 346 violations  
Include 351.02 def  
(a) 5. repeat  
b. and  
d. repeat  
b. and to any viols of  
say ch 346 that we  
required.  
~~345 39(5)~~

3. eliminate 961.50 suspension

4. eliminate automatic 6 mo revocation  
for 4th conviction of OAR or OAS

(3a) ~~AND~~ make 1st offense a civil forfeiture,  
not a crime?

5. 343.44<sup>(1)</sup>(d) ~~same~~ fines & jail times  
for NQV OWI, fleeing, or reckless  
~~aggregate of costs may not exceed fines~~

SPD input + on probationary licenses: 25% increase,  
except 313.315(2)(a) 3. not doubling of points  
amend 4.